UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

	)	
Calpine Energy Services, L.P.	)	Docket No. ER15-376-000
	)	

COMMENTS OF THE INDEPENDENT MARKET MONITOR FOR PJM

Pursuant to Rule 211 of the Commission's Rules and Regulations,[1] Monitoring Analytics, LLC, acting in its capacity as the Independent Market Monitor for PJM[2] ("Market Monitor"), submits these comments responding to the petition for waiver filed by Calpine Energy Services, L.P. ("Calpine") on November 12, 2014 ("November 12th Petition").

In the November 12th Petition, Calpine seeks retroactive waiver of tariff provisions so that it can collect $3,330,658.95 from customers of PJM Interconnection, L.L.C. ("PJM"). The requested payment is associated with certain of Calpine's combined cycle units for which Calpine bought gas in order to run on January 27, 2014, after they were notified to be available for Conservative Operations, but were canceled by PJM, were not committed and did not run. The combined cycle units at issue are Calpine's Hay Road Energy Center Units Nos. 4 and 8 ("Hay Road Units") and Bethlehem Energy Center Units Nos. 4 and 8 ("Bethlehem Units") (collectively "Hay Road/Bethlehem Units"). The Hay Road/Bethlehem Units are dual fuel with the ability to burn gas and oil.

Calpine has not supported its request for a retroactive waiver of the PJM market rule so that it can recover the costs of gas that was purchased but was not burned to serve PJM

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[1] 18 CFR § 385.211 (2011).

[2] Capitalized terms used herein and not otherwise defined have the meaning used in the PJM Open Access Transmission Tariff ("OATT").

customers. By requesting the waiver of unspecified rules, Calpine seeks to shift losses to customers that resulted from the risks associated with being a Generation Capacity Resource in the PJM market that are appropriately borne by generation owners and in part resulted from its business decisions. Further, Calpine has incorrectly calculated the amount ostensibly owed, not because they claim $3,330,658.95 while their Exhibit C clearly shows a slightly smaller number,[3] and not because Exhibit C itself has a mathematical error which, when corrected, would yield a lower gas balancing loss. Rather, the calculation is wrong because the excess gas resulted from procurement and fuel switching decisions made by Calpine. Any unrecovered gas costs, regardless of the amount, are entirely the responsibility of Calpine and Calpine's claim should be rejected for that reason.

Procuring fuel to run its units when needed is Calpine's obligation related to its owned capacity resources, not the obligation of PJM customers. Calpine has been appropriately compensated under the PJM market rules. The PJM market rules do not compensate unit owners for fuel that is purchased but not used to provide electric power to customers. Such a rule is not part of the PJM market design, such a rule should not be part of the PJM market design, and such a rule should not be effectively created especially for Calpine or any other company, through a retroactive waiver of PJM market rules. Calpine is not guaranteed recovery of its costs to provide capacity or energy. When operating in markets, suppliers are at risk for losses. The allocation of risk to those best situated to bear it is an essential feature of markets in general and the PJM wholesale power market in particular. Suppliers do not provide profits made on gas transactions for operating power plants to customers and suppliers do not and should not expect to receive payment for losses on gas transactions for operating power plants from customers.

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3 Because this pleading is public, the Market Monitor has in some cases avoided the inclusion of detailed information. The Market Monitor continues to evaluate whether to file a non-public version. The Market Monitor is ready to provide additional information if and when the Commission requests it.

Calpine fails to mention its offer strategy for the days in question (Gas Days January 26 and 27). Without revealing confidential information, an additional question that should be answered prior to providing any retroactive waiver to Calpine is whether Calpine's offers were consistent with their professed desire to run. If Calpine's offers were not designed to maximize the chances of economic dispatch, consistent with the costs of operation, this is additional evidence that Calpine had full responsibility for the risks and rewards associated with the operation of its units and that it should not receive a retroactive waiver.

Calpine has not shown good cause to grant its petition for retroactive waivers. Granting the requested relief would be inconsistent with the proper assignment of risks in markets regulated through competition and inconsistent with the obligations assumed by Generation Capacity Resources. Calpine is asking that market rules be waived because the rules allegedly had large negative consequences for Calpine on a specific day. Granting the requested waiver would violate a basic precept of markets and open the door to an unlimited set of such requests whenever generation owners incur losses. PJM customers are not, and should not be, a source of funds to pay for suppliers' losses in markets.

Accordingly, the November 12th Petition should be denied.

I. COMMENTS

A. The Request for Retroactive Waiver of the Rules Preventing the Recovery of the Cost of Gas Purchased but Not Burned Should Be Denied.

1. Background

PJM operates a wholesale power market in which competition results in compensation to suppliers and payments by loads. FERC's decision to use competition in order to produce just and reasonable results means that compensation is left to the market, operating consistent with a set of rules defined in the tariff, rather than to regulatory decisions about individual units' required returns or costs of fuel.[4] Since the inception of full market-based LMP markets in PJM on April 1, 1999, energy market and capacity market prices have been high and energy market and capacity market prices have been low. Suppliers have been aggrieved at times and load has been aggrieved at times.

In markets, generation suppliers assume sole responsibility for all the decisions that come with owning and operating generating units and for all the associated risks and rewards of owning and operating generating units. When suppliers have a cost advantage in the market, suppliers' profits increase and when suppliers have a cost disadvantage in the market, suppliers' profits decrease. PJM market rules assign risks to those best situated to manage them. Suppliers are best situated to manage operational risks at their power plants. Suppliers are best situated to manage risks associated with the availability of their power plants to meet their market and reliability obligations. Suppliers are best situated to manage fuel price risks at their power plants. Suppliers receive the benefits when the results are favorable; suppliers pay the costs when the results are unfavorable.

Calpine proposes to retroactively change these basic market precepts to shift responsibility for fuel price, fuel procurement and fuel choice risks to all PJM customers for January 27, 2014. Calpine does not propose to credit PJM customers with any profits associated with fuel purchases.

Calpine has to purchase fuel to run the Hay Road/Bethlehem Units. These units are dual fuel with the ability to burn gas or oil. Calpine is responsible for long and short term decisions about fuel procurement, including the firmness of its gas supply, the timing of gas purchases and sales, the availability of oil and the decisions about whether to burn gas or

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4 *See*, *e.g.*, *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs.¶ 31,089 (1999), , 89 FERC ¶ 61,285 (1999) (The Commission determined that competition is the best way to protect the public interest and ensure that electricity customers pay the lowest price possible.); *order on reh'g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), *aff'd sub nom. Pub. Util. Dist. No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

oil. It is inappropriate for Calpine to ask PJM customers to hold it harmless from such decisions, from which Calpine has benefitted. It is also unfair to Calpine's competitors, who may have made different choices about fuel supply.

The Hay Road/Bethlehem Units were Generation Capacity Resources for the 2013/2014 Delivery Year, which runs from June 1, 2013, through May 30, 2014. Calpine received substantial capacity revenues for these units during that Delivery Year. Like all Generation Capacity Resources, these Units are required to offer into the PJM Day-Ahead Energy Market and Real-Time Energy Market every day and the Calpine units have an obligation to provide energy whenever it is needed for the duration of the Delivery Year.[5] In managing fuel procurement risk, Calpine may make money or lose money. If Calpine enjoys gains as a result of successful fuel cost management, Calpine does not share the gains with PJM customers. If Calpine suffers losses from fuel cost management, Calpine does not share the losses with PJM customers. There is nothing in the facts of this case that supports a different approach. Calpine should not be allowed to share its losses with PJM customers.

Generation Capacity Resources are required to be available at their installed capacity value unless on an approved scheduled outage or a forced outage.[6] No scheduled outage applied to the Hay Road/Bethlehem Units on January 27, 2014. Gas was available to all three stations for purchase by Calpine for operating on January 27, and Calpine did purchase gas for the Hay Road/Bethlehem Units. Calpine had purchased oil which was in storage and available to the Hay Road/Bethlehem Units, the dual fuel stations, for operating on January 27. Calpine did the right thing in purchasing fuel and, in doing so, acted consistent with its capacity obligations.

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5 *See, e.g.,* OATT Attachment DD § 8.1; PJM Operating Agreement Schedule 1 § 1.10.1A(d).

6 *See* OATT Attachment DD § 8.1; PJM Reliability Assurance Agreement § 9.1(c).

2. Calpine Has Not Justified Retroactive Waiver of the Rules Preventing Recovery of the Cost of Gas Not Used to Serve Customers for Units with Canceled Dispatches.

Calpine states (at 5) that at approximately 1200 on Friday, January 24, 2014, PJM's dispatch desk informed Calpine that Hay Road/Bethlehem Units, would be required to run as "Conservative Operations" units beginning at 0400 on Monday, January 27, 2014, and continuing through 2359 on Wednesday, January 29, 2014.[7] [8] Calpine states (at 6) that a PJM dispatch call at 2340 on Sunday, January 26, cancelled the run instruction for the Hay Road/Bethlehem Units for January 27 in its "entirety." However, that is not correct as the transcript of the call clearly shows two of the four units rescheduled to start at 1600 and only two cancelled for January 27.[9] In fact, these two units, Bethlehem 8 and Hay Road 4, were started before 1400 on Monday afternoon, ran past 2400, and were turned off for only about an hour. They were then restarted before 0300 on Tuesday, January 28, along with the other two units. Both Bethlehem units were self-scheduled by Calpine for the morning of January 28, within Gas Day January 27, apparently burning oil instead of natural gas.

Calpine states that it purchased gas sufficient to cover operation on Gas Days January 25 through 27, including volumes needed to run as requested by PJM from 0400–0959 on January 27, 2014, which corresponded to the gas day that commenced January 26, 2014 ("January 26th Gas Day"). Calpine states that because of the lack of trading activity after 2340 Sunday night and because the pipeline nomination deadlines had passed,

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[7] All time references herein are Eastern Standard Time.

[8] Calpine cites to PJM Manual 13 (Emergency Operations) at 41 ("Manual 13") (providing details regarding Conservative Operations and stating that "[t]he need to operate the PJM RTO more conservatively can be triggered by any number of weather or environmental events," including weather related events, and that "[d]uring conservative operations, system operations may reflect conservative transfer limit values, selected double-contingencies, and/or maximum credible disturbances").

[9] {CITE}

Calpine could not resell or reallocate gas purchased for the January 26th Gas Day and was forced to park the gas, although the evidence suggests that Calpine burned oil despite having bought a large amount of gas for January 26th Gas Day. The cost of the gas less proceeds from a later sale resulted in an out-of-pocket loss claimed by Calpine at $3,330,658.95. This is the only loss for which Calpine seeks retroactive waiver of rules that do not allow for the recovery of such losses from PJM customers.

At the time Calpine received the call from PJM, including for six hours on the January 26th Gas Day, Calpine states (at 7) that there was oil stored on site sufficient to run the Hay Road Units for approximately 25 hours and the Bethlehem Units for approximately 22 hours. Calpine explains (*id*.) that it decided to purchase gas in order to "conserve the oil that was on hand."

Calpine states (at 14):

> [Calpine's] own analysis led it to believe that PJM would not run the Hay Road/Bethlehem Units in the early morning hours of January 27, 2014, and [Calpine] would therefore not have procured fuel in anticipation of the units running at such time. But CES's business judgment became irrelevant in light of PJM's Conservative Operations instruction.

Calpine does not explain how the Conservative Operations instruction meant that it was required to procure gas, particularly when Calpine knew that it had fuel oil available and its own analysis contradicted PJM's and predicted that the Hay Road/Bethlehem Units were unlikely to run. Calpine claims that it foresaw that PJM was unlikely to run the Hay Road/Bethlehem Units and that it had more than the sufficient oil to cover some or all of the hours on the January 26th Gas Day, but it instead chose to purchase gas to cover weekend operation as well as the projected Monday "conservative operations." Two of the four units cleared the Day-Ahead Energy Market on the weekend, yet during the Sunday 1620 phone call when PJM reiterated the units were needed for Monday morning after none had been awarded day ahead schedules, Calpine did not question PJM despite its own misgivings.

Whether or not Calpine made the right decision should not be relevant to this case. The point is that the decision was Calpine's decision, not a decision by PJM customers. Calpine has the incentive to make the best decisions when managing fuel costs for the Hay Road/Bethlehem Units. The claim for $3,330,658.95 for gas balancing costs should be denied.

Nevertheless, to the extent that retroactive transfer of some or all of the losses from this decision from Calpine to PJM customers is contemplated in this proceeding, the issue of whether Calpine made the right decisions should be thoroughly investigated. Calpine should not be able to retroactively escape (or be denied the benefits of) the consequences of its decisions, right or wrong.

Calpine has not provided information sufficient for an evaluation of whether of its decision to buy gas instead of burning oil or taking other related measures were the correct decisions. Customers should not have losses retroactively imposed on them for well intentioned but incorrect fuel management decisions. In this case, Calpine has failed to demonstrate that it made the right decisions. Regardless of whether Calpine made the right decisions, the risks and rewards associated with its decisions belong solely to Calpine.

In order to demonstrate that it made the right decision, Calpine needs to show:

- Whether it revised, and why it revised, its initial firm judgment that PJM would not call its units on January 27.
- Whether its decision to conserve oil was correct, in light of the opportunity to purchase and store additional stores of fuel oil, or whether they actually used oil and left a gas surplus as a result.
- Whether its decision to make use of natural gas three-day, weekend, and Gas Day January 26 only package purchases for the Hay Road/Bethlehem Units was correct in supplying the fuel input needs of these units. The MMU estimates that 42 percent of the operation for these four units for Gas Days January 25 through 27 was fueled by oil. Calpine made decisions to purchase

more expensive gas while operating on cheaper oil, leading to the imbalance suffered.

- Whether Transcontinental offered options or flexibility for delivery or procurement of which Calpine did not take full advantage.
- Whether its decision to operate only some units and employ oil on Gas Day January 26 while purchasing gas, directly resulted in the surplus gas used to arrive at the $3.3 million loss.

Calpine purchased enough Gas Day January 26 gas to operate the four combined-cycle units in question for over 7 hours at full output. But Calpine decided to self-schedule only two of the units in the Day Ahead Energy Market, and the MMU estimates one did so oil-fired. A third unit ran at reduced output and for only two hours. As a result, 81 percent of the Gas Day January 26 fuel allotment was surplus. Had Calpine used gas for the unit firing oil, only 66 percent of the gas purchases would have been surplus. Obviously, had Calpine operated the other two units on Sunday and/or purchased less gas nominated for Gas Day January 26, there would have been no surplus at all. Unit management and fuel procurement decisions made by Calpine directly contributed to the Gas Day January 26 gas imbalance.

If Calpine seeks to retroactively change the rules, then it invites close scrutiny of its gas purchasing decisions. Calpine has an obligation to provide sufficient information, which it has not yet provided, for meaningful review of how it incurred the claimed $3,330,658.95 loss. Under no circumstances should Calpine be allowed to pass along the consequences of its mistakes while enjoying the benefits of good decisions.

3. Calpine Has Not Shown That Its Offers Were Designed to Maximize the Economic Dispatch of the Units

Calpine fails to mention its offer strategy for the days in question (Gas Days January 26 and 27). Without revealing confidential information, an additional question that should be answered prior to providing any retroactive waiver to Calpine is whether Calpine's offers were consistent with their professed desire to run. If Calpine's offers were not designed to maximize the chances of economic dispatch, consistent with Calpine's claimed costs of operation, this is additional evidence that Calpine had full responsibility for the risks and rewards associated with the operation of its units and that it should not receive a retroactive waiver.

As a hypothetical, if a unit offered its units at $1,000 per MWh and requested to be made whole for gas purchased but not burned because the unit was not dispatched, the request would presumably be rejected without question. While this hypothetical was not the case for the Calpine units, the question of offer strategy must be considered when attempting to determine why the units did not run for the limited period in question. It also raises the question about the level of any profits otherwise received by Calpine for operating during the days in question and why Calpine has not offered to offset its request for a waiver by any such profits. Calpine has not explained why customers should only be responsible for its losses but not benefit from its gains.

4. Generation Capacity Resources Such As the Hay Road/Bethlehem Units Have an Obligation to Provide Energy When Needed.

Generation Capacity Resources such as the Hay Road/Bethlehem Units have an obligation to provide energy when it is needed.[10]

Calpine characterizes PJM communications with it (e.g., at 8) as "Conservative Operations run instructions," but it does not recognize and appropriately take into account that, regardless of how PJM's communications on the Event Days are characterized, the Hay Road/Bethlehem Units are Capacity Resources, and, as such, are obligated to be ready

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10 *See New England Power Generators Association, Inc. v. ISO New England, Inc.*, 144 FERC ¶ 61,157 at P 47–59 (2013) ("*NEGPA v ISO-NE*") ("The Commission agrees with ISO-NE that the Tariff imposes a strict performance obligation on capacity resources and that capacity resources may not take economic outages, including outages based on economic decisions not to procure fuel or transportation. However, … we find that a demonstrated inability to procure fuel or transportation, as opposed to an economic determination not to procure fuel or transportation, may legitimately affect whether a capacity resource is physically available under the Tariff, and therefore may excuse nonperformance."), *order on reh'g*, 145 FERC ¶ 61,206 (2013).

to provide energy when needed.[11] For January 27, 2014, PJM issued a Cold Weather Alert. PJM market rules explain, "The intent of the alert(s) is to keep all affected system personnel aware of the forecasted and/or actual status of the PJM RTO… Alerts are issued in advance of a scheduled load period to allow sufficient time for members to prepare for anticipated initial capacity shortages."[12]

PJM issued a Cold Weather Alert for January 27 on Thursday, January 23. The next day around noon, PJM contacted Calpine so that the Hay Road/Bethlehem Units would be ready to provide energy when needed.[13] Once PJM determined that the Calpine Units were no longer needed, PJM released them. Under the PJM market rules, PJM does not compensate Generation Capacity Resources for the cost of fuel that generators do not use to provide energy. The market rules are designed to avoid that result, which would be fundamentally inconsistent with a competitive market design.

The Hay Road/Bethlehem Units are Generation Capacity Resources for the 2013/2014 Delivery Year. These units were paid significant capacity revenues to be ready throughout the year to provide energy when it is needed. These units have an obligation to provide the service for which they are paid every day.[14]

PJM and PJM customers are entitled to expect that Calpine will procure fuel for the Hay Road/Bethlehem Units so that they are ready to run when called and that they will be available when called. This leaves decisions about a resource's readiness in the hands of the owner, and the owner is entirely responsible for the attendant risks and rewards.

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11 *Id*.

12 PJM Manual 13 § 2 at 16.

13 *Id*.

14 *See*, *e.g.*, OATT Attachment DD § 8.1; PJM Operating Agreement Schedule 1 § 1.10.1A(d).

B. The Standards Are Not Met to Grant a Request for Retroactive Waiver of the Rules Preventing the Recovery of Gas Purchased but Not Burned in Order to Provide Service.

Calpine seeks a retroactive waiver of the PJM market rules so that it can obtain payment for asserted losses on its gas purchases on January 27, 2014. Calpine has not demonstrated that it meets the requirements to waive the tariff provisions that are designed to prevent the recovery of gas purchased but not burned to provide service to PJM customers and, effectively, to put in their place a rule that would permit Calpine to recover such costs from PJM customers during January 27, 2014.

Calpine argues that, consistent with precedent, "the requested waiver (1) is of limited scope; (2) remedies a concrete problem; and (3) does not have undesirable consequences, such as harming third parties."[15] Calpine also argues that retroactive relief is justified. Because the request is for a retroactive waiver, a higher level of scrutiny should apply.[16]

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15 Calpine at 11 & n.41, citing *Indianapolis Power & Light Co. v. Midcontinent Independent System Operator, Inc.*, 149 FERC ¶ 61,047 at PP 64–68 (2014); *PJM Interconnection, L.L.C.*, 135 FERC ¶ 61,069 at PP 8–9 (2011); *ISO New England Inc.*, 134 FERC ¶ 61,182 at P 8 (2011); *California Independent System Operator, Inc.*, 132 FERC ¶ 61,004 at P 10 (2010); *Hudson Transmission Partners, LLC*, 131 FERC ¶ 61,157 at P 10 (2010), *reh'g denied*, 134 FERC ¶ 61,030 (2011); *Pittsfield Generating Co., L.P.*, 130 FERC ¶ 61,182 at P 9 (2010); *ISO New England Inc.-EnerNOC, Inc.*, 122 FERC ¶ 61,297 at P 13 (2008); *Central Vermont Public Service Corp.*, 121 FERC ¶ 61,225 at P 28 (2007); *Waterbury Generation LLC*, 120 FERC ¶ 61,007 at P 31 (2007).

16 See Calpine at 11 & n.42, citing *California Indep. Sys. Operator Corp.*, 147 FERC ¶ 61,111 (2014); *New York Independent System Operator, Inc.*, 144 FERC ¶ 61,147 (2013); *San Diego Gas & Electric Co.*, 140 FERC ¶ 61,122 (2012); *California Independent System Operator Corp.*, 139 FERC ¶ 61,207 at PP 48-49 (2012); *Southwest Power Pool,Inc.*, 138 FERC ¶ 61,200 (2012); *PJM Interconnection, L.L.C.*, 138 FERC ¶ 61,125 at P 5 (2012); *New York Independent System Operator, Inc.*, 115 FERC ¶ 61,026 at P 47 (2006). The law that applies to the Commission's authority to grant retroactive waivers is unclear. *See Transcontinental Gas Pipe Line Corporation*, 62 FERC ¶ 61,129 at 61,827–62,828 (1993) ("[no] court has squarely decided whether the Commission's waiver power may extend backward past the original filing date absent the parties' agreements. Indeed, resolution of the conflict between the waiver power and the retroactive ratemaking rule presents difficult questions of statutory interpretation and regulatory policy," citing Columbia Gas Transmission Corp. v. FERC, 895 F.2d 791, 795 (D.C. Cir. 1990), *cert. denied*, 408 U.S. 907 (1990), quoting City of Girard v. FERC, 790 F.2d 919, 924 (1986)).

Calpine's request for waiver fails under each element of the standard that it identifies.

The PJM market rules that Calpine wants waived are all in place for good reasons and Calpine has provided no good policy reason for waiving them and no good explanation for why the rules should not apply in this case. The responsibility for managing all aspects of fuel related risk is assigned to suppliers because suppliers are in the best position to make choices about how to manage that risk. Fuel related risk management is difficult, as Calpine's description of its difficulties on the Cold Weather Alert Days illustrates, and that is why the rules place incentives on Calpine and other suppliers to manage those risks. Fuel related risks, while they appear to be the result of short run market conditions, are the result of long term decisions that have been made by generation owners. These decisions include the availability of back up fuel, the level of firmness of gas purchases, and whether to do a winter test of equipment. PJM customers are not in a position to manage fuel related risk either directly or indirectly through PJM. It does not matter that the Alert Days are days when fuel risk management was challenging. High risk days are exactly the days when the incentives to manage fuel well matter. High risk days are the reasons the incentives exist. High risk days are exactly the days when market participants should be held to the market rules. Nothing happened on the Alert Days that was not foreseeable and not well within the scope of conditions that the rules were designed to address. The rules are not meant to apply only during average weather

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The Market Monitor believes as a matter of policy that there are circumstances where retroactive relief is appropriate. The Make Whole Waiver is an example. The Make Whole Waiver applied to rules that had an unintended result and operated against their purpose which is to ensure market efficiency and the appropriate allocation of risks. When the market rules operated precisely as they were intended to operate, precisely as they were expected to operate, and in circumstances that were foreseeable, these factor should weigh heavily against granting a waiver and against granting a waiver on a retroactive basis. For these reasons, the waiver of rules preventing recovery of losses on fuel not used to serve PJM customers should not be granted.

conditions. Waiving the rules for Calpine would open the floodgates for others to ask for waivers whenever the stakes are high and market decisions have negative consequences.

1. **The Request Is Not of Limited Scope.**

Calpine's requested waiver is not of limited scope. Calpine seeks waiver of whatever provisions prevent it from receiving a payment for certain costs of unused fuel from PJM customers. There are many such provisions preventing payments in circumstances where no fuel is burned to serve customers. Calpine does not bother to specify the particular rules that must be waived. Moreover, new provisions would be needed to obtain the result that Calpine seeks.

The existing rules are all in place for good reasons. Provisions for make whole payments appropriately limit when make whole payments are made, and the rules for make whole payments do not apply to Calpine's circumstances. A waiver is not limited in scope when granting it would require broad revisions of the PJM market rules and would incorporate significant changes to those market rules, as would Calpine's request.

Market Participants must manage their risks all of the time. There is nothing extraordinary about continuing to assign to Calpine responsibility for managing its risks under the circumstances on January 27, 2014. Peak days are not the norm, but they are expected to happen, and participants are expected to manage the risks when they happen. Market rules are not waived during cold weather or hot weather. Many other resource owners also had to manage risks on January 27th in decisions made on or just before that day and in decisions made long before. Some did so more successfully than others. PJM customers are not required to shoulder the consequences of unsuccessful risk management. PJM customers do not receive the benefits when risks are successfully managed.

The Commission recently rejected a waiver in similar circumstances because the requested waiver was not limited in scope. On March 14, 2014, the Commission denied a request for waiver of the market rules of the California Independent System Operator, Inc. ("CAISO") from certain market suppliers who sought an order that would require CAISO to "reimburse generators for the cost of natural gas procured in response to CAISO dispatch directives," including "the cost of disposing of natural gas when CAISO later elects not to dispatch units for which natural gas was procured."[17] The Commission found that the request was "overly broad in scope and did not meet the Commission's requirements for a tariff waiver." Consistent with this precedent, Calpine's request for waiver of PJM market rules should also be denied.

The Commission found (at P 22): "Specifically, Suppliers' request does not identify specific provisions of the CAISO tariff for which they seek waiver. Rather, Suppliers' waiver request seeks broad revisions of the CAISO tariff that appear to incorporate significant changes to the CAISO current market rules." Calpine seeks a broad change to the applicable market rules in order to achieve an outcome opposite to the outcome intended by the rules. Calpine has not shown that a discrete market rule or set of existing market rules were never intended to apply to its particular isolated circumstances, that the rules have become obsolete, or that the rules create an inefficient, unjust and unreasonable outcome.

2. The Request Does Not Establish a Concrete Problem with the PJM Market Rules That Needs to Be Remedied.

Calpine has not identified a concrete problem with the PJM market rules for which it seeks waiver. Calpine should not be allowed to recover losses that resulted from buying gas but being unable to burn it.[18] Calpine has the responsibility to manage its fuel procurement

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17 *Indicated CAISO Suppliers*, 146 FERC ¶ 61,183 at P 1.

18 Calpine cites certain cases in support of its petition (at 13 n.48) that, when properly applied to Calpine's facts and circumstances, show that its petition should be denied. In *Dominion Energy Marketing, Inc., et al.*, 143 FERC ¶ 61,233 (2013), *reh'g denie*d, 145 FERC ¶ 61,109 (2013), the Commission granted relief for generators that burn fuel in order to comply with reliability directives. Calpine did not burn fuel in order to comply with PJM directives. In *New England Power Generators Association, Inc. v. ISO New England Inc.*, 144 FERC ¶ 61,257 (2013), the Commission found that capacity resources have an obligation to procure fuel in order to provide energy when needed. This holding nullifies the core of Calpine's complaint, when depends upon Calpine's claim

risks. Each of the provisions that Calpine seeks to change operates as it is intended to operate, and no changes to provisions are needed. No changes to these rules have been proposed.

Calpine shows that managing fuel related risks on January 27, 2014, was challenging. The Market Monitor has questions about some of Calpine's decisions as it managed those risks. Meaningful evaluation of Calpine's decisions requires more information from Calpine. The point of the questions is not to suggest that Calpine's skill at managing risks should determine whether it should be eligible for relief. Calpine should not be eligible for relief even if Calpine could show that it had made no mistakes on the January 27, 2014. The point is that managing risks is difficult and the costs incurred can vary widely based on the quality of those decisions. Calpine and other suppliers must have strong incentives to make the best decisions that they can, and the only way to assign those incentives is to ensure that suppliers know that they will live with the consequences of their decisions.

It also makes no sense to suddenly reassign costs when they are higher than expected. The incentives must apply to low likelihood/high cost events as well as the reverse. Regulation through competition and markets is not just for routine operations. It is meant to be a comprehensive regulatory regime.

The answer to Calpine's problems on January 27, 2014, is not to shift the costs and risks of similar future events to PJM customers. It is not the responsibility of PJM customers in a competitive market to manage the risks of owning and operating Generation Capacity Resources. The risks and rewards of such decisions appropriately lie with the owners of Capacity Resources.

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that it bought rule only in response to a specific obligatory directive from PJM to purchase gas and not based on Calpine's preexisting obligation to procure fuel so that its capacity resources could provide energy when it is needed.

3. The Request Cannot Be Granted Without Harm to Third Parties.

Calpine's request clearly does not meet the third requirement for a waiver. Waiving the rules for Calpine's benefit means harming third parties. Granting Calpine's requested waiver would require customers to pay Calpine's gas costs.

C. Calpine's Request for Alternative Relief Should Be Denied

Calpine requests (at 16–17), "to the extent that the Commission denies this waiver request, … that the Commission clarify that a generator is entitled to treat a Conservative Operations instruction issued by PJM simply as a notice of possible future system conditions, rather than as imposing any obligation for the generator to operate." Calpine's request for relief should be denied. No such clarification is necessary. To the extent that Calpine intends that such clarification would reduce or eliminate the obligation of capacity resources to procure fuel so that they can provide energy when it is needed, consistent with *New England Power Generators Association, Inc. v. ISO New England Inc.*, such clarification would unreasonably compromise the market and reliability value of Capacity Resources procured through RPM.[19]Any Relief Awarded Calpine Should Be Conditional on a Process for Calculating and Verifying the Correct Amount.

If, contrary to the Market Monitor's arguments, the market rules are waived so that Calpine can receive a make whole payment for part of its request, then the Commission should reserve the decision on the specific amount of make-whole payment. In that event, a separate process would be needed to calculate and verify Calpine's costs and to otherwise ensure proper application of whatever principles the Commission determines to apply.

No specific claims should be paid without thorough investigation of whether they have a just and reasonable basis. The Market Monitor has discovered and discusses above errors in the information that Calpine provided in Exhibit C. Other discrepancies in

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[19] 144 FERC ¶ 61,257 (2013).

Calpine's representation of the type of fuel used have been identified, and those discrepancies should be investigated before Calpine receives any compensation outside of the tariff rules.

The Market Monitor does not believe that any waiver is appropriate, regardless of how well Calpine managed its fuel procurement. If however, it is determined that a waiver is appropriate, then it is important to calibrate any such relief based on performance. If Calpine receives any relief, then Calpine still should not receive compensation for unrecovered gas costs that are the result of poor decisions. The Market Monitor is ready to assist with such calculation and verification, if necessary.

II. CONCLUSION

The Market Monitor respectfully requests that the Commission afford due consideration to these comments as the Commission resolves the issues raised in this proceeding.

Respectfully submitted,

Jeffrey W. Mayes

General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com

Joseph E. Bowring
Independent Market Monitor for PJM
President
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610) 271-8051
joseph.bowring@monitoringanalytics.com

Dated: December 17, 2014

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at Eagleville, Pennsylvania,
this 17th day of December, 2014.

Jeffrey W. Mayes
General Counsel
Monitoring Analytics, LLC
2621 Van Buren Avenue, Suite 160
Valley Forge Corporate Center
Eagleville, Pennsylvania 19403
(610) 271-8053
jeffrey.mayes@monitoringanalytics.com